## REMARKS

Claim 1 has been amended to clarify that the subject has an occult CNV lesion. Thus, a subset of subjects having an occult CNV lesion is defined in claim 1, namely, a subject having an occult CNV lesion that has a small lesion or poor visual acuity or both, as defined therein. Treating this subset of subjects having occult CNV lesions was not expected to be successful because prior studies showed lesions which had evidence of occult CNV did not appear to benefit (please see page 4, lines 23-24 of the present specification).

In reviewing the prior Office Actions and the Advisory Action, the Office often refers to "routine experimentation." However, whether or not routine experimentation would lead one to the claimed invention is irrelevant with respect to an obviousness determination. Routine experimentation refers to an enabling disclosure, which is not at issue here. It seems as though the Office is suggesting that it is "obvious to try" Levy's method on a subpopulation of subjects not disclosed therein. Of course, obvious to try a particular method is not the standard upon which obviousness is determined. Please see *In re O'Farrell*, 853 F2d 894, 7 USPQ2d 1673, 1680-81 (Fed. Cir. 1988).

In the Advisory Action, the Office points to Levy at column 13, lines 20-40 and column 12, lines 5-40 for disclosure of lesion size. However, column 13, lines 20-40 describe damage to normal retina and choroid in accordance with a defined scale, but does not mention lesion size. Likewise, column 12, lines 5-40 disclose different dye doses and variable treatment times, but do not describe lesion size. It is not clear, therefore, where the disclosure of lesion size is found in Levy. Clarification is respectfully requested. As a result, optimizing the efficacy of a treatment based on the lesion size cannot be derived from Levy's disclosure.

Further, the Office alleges that occult CNV lesions fall within the CNV lesions disclosed in Levy. Even if this allegation were true, there must be motivation to select a particular species within the genus with an expectation that such selection would be successful. However, the present specification as described above on page 4 would lead a skilled artisan away from treating occult CNV lesions as described in Levy. Further, the applicants theorize that, at best, subjects having

large lesions would experience a greater benefit of photodynamic therapy than those having smaller lesions as claimed. Please see page 5, lines 14-17. Moreover, the species as claimed, namely a subgroup of subjects having occult CNV lesions of either a small size or with poor visual acuity as claimed was not disclosed in Levy.

Applicants' counsels respectfully request an interview with the Examiner and the Examiner's supervisor if the Examiner is not convinced that the present claims are in condition for allowance.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 273012012500. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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